

Customer No. 24498  
Serial No. 10/580,806  
Resp. to OA dtd July 18, 2008

PATENT  
PU030224

REMARKS

This application has been reviewed in light of the Office Action dated July 18, 2008. Claims 1-13 are currently pending and stand rejected. By the present amendment claims 1, 2, 7, 8, and 13 have been amended. Claims 3 and 9 have been cancelled without prejudice. No new matter is believed to be added. Reconsideration of the claim rejections is requested in view of the above claim amendments and following remarks.

**Rejections under 35 U.S.C. 102 (b)**

Claims 1, 2, 4-8, and 10-13 are rejected under 35 U.S.C. 102 (b) as being anticipated by Wasilewski (U.S. Patent Publication 2002/0044658). Applicants respectfully assert that amended claims 1, 2, 7, 8 and 13, are not anticipated by Wasilewski.

Wasilewski is directed towards a cable television system providing conditional access to services. Wasilewski discloses a cable television system from which programs are broadcast to a plurality of set top units, which are configured for receiving and selectively decrypting the programs using public, private and session keys. As part of the system in Wasilewski, a user may make impulse purchases through a set top unit to request a certain program for viewing.

As the Examiner acknowledges, however, Wasilewski does not teach or suggest an access device communicating a desired impulse purchase selection to a service provider using an out of band frequency which is different than content providing frequencies. Claims 1, 2, 7, 8 and 13 have been amended to essentially recite, among other

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things, a method or an access device, comprising means for "*indicating a desired impulse purchase selection using an out of band frequency which is different than content providing frequencies.*" Therefore, unlike Wasilewski, the present invention includes two-way communication over the out of band frequencies.

In other words, while the access device in Wasilewski can only receive messages over out of band frequencies, the access device in the present invention is capable of both receiving and transmitting messages over out of band frequencies. This capability provides the present invention with many advantages over Wasilewski. One such advantage is increased bandwidth for the in band frequencies used for providing content. Being able to perform all impulse purchase communications on out of band frequencies causes less traffic, and hence more bandwidth, on the content providing frequencies. Another advantage is increased security and less vulnerability to hackers. Both Wasilewski and the present invention aim to make "stealing" programs more difficult. By being able to transmit more sensitive security information on out of band frequencies which are different than the frequencies used for providing content, the present invention allows for more separation between authorization information and content than does Wasilewski, making hacking into the programs more difficult.

Wasilewski is not only silent about indicating a desired impulse purchase selection using an out of band frequency, but Wasilewski lacks any discussion of the above-described advantages as well. Thus, it is clear that Wasilewski did not contemplate a method for or an access device comprising means for "*indicating a desired impulse purchase selection using an out of band frequency which is different than content providing frequencies.*"

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As such, Wasilewski does not teach or suggest all of the limitations in claims 1, 2, 7, 8 and 13, as amended. Hence, the amended claims of the present invention are not anticipated by Wasilewski.

#### Rejections under 35 U.S.C. 103 (a)

Claims 3 and 9 were rejected under 35 U.S.C. 103 (a) as being unpatentable over Wasilewski in view of Khandelwal (U.S. Patent No. 7,058,964). As stated above, claims 3 and 9 have now been cancelled. However, since their content has been added to claims 1, 2, 7, 8 and 13 by this amendment, this rejection is still relevant and is discussed below.

Applicants assert that Wasilewski and Khandelwal, either alone or in combination, do not teach or suggest a method for or an access device comprising means for "*indicating a desired impulse purchase selection using an out of band frequency which is different than content providing frequencies.*"

From the above discussion, it is clear that Wasilewski did not contemplate using an out of band frequency to indicate a desired impulse purchase selection. As a result, Wasilewski does not teach or suggest a method for or an access device comprising means for "*indicating a desired impulse purchase selection using an out of band frequency which is different than content providing frequencies,*" as essentially claimed in amended claims 1, 2, 7, 8 and 13. Thus, claims 1, 2, 7, 8 and 13 as amended are not rendered obvious by Wasilewski.

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Khandelwal does not cure the deficiencies of Wasilewski in this regard.

Khandelwal is directed to a flexible digital cable network architecture and service method.

Khandelwal discloses a cable medium connecting a plurality of hosts to a service provider.

While Khandelwal discloses that the set top devices connect the hosts to a service provider via in band and out of band channels, Khandelwal does not teach or suggest a method for or an access device comprising means for "indicating a desired impulse purchase selection using an out of band frequency which is different than content providing frequencies."

Khandelwal does not teach a method for impulse purchases at all. In fact, Khandelwal only references impulse purchases twice in its specification. The first reference (col. 1, line 20), is merely a background / prior art reference to describe the typical services associated with digital cable networks. Similarly, the second reference (col. 6, line 23) only explains the types of applications that may contend for resources in a set top box. Neither of these discussions even remotely suggests how impulse purchase selections are made, let alone using an out of band frequency to indicate a desired impulse purchase selection.

Moreover, the only mention of out-of-band channels in Khandelwal discloses only that "[t]he POD modules connect the hosts to the MSO by a cable medium using in-band and out-of-band channels" (col. 4, lines 63-66). Khandelwal provides no further explanation as to how exactly these in band and out of band connections are used or what is transmitted over these connections. Merely disclosing that hosts are connected to service providers using in band and out of band channels in no way teaches or suggests a new way to use an out of band channel connection, namely to indicate an impulse purchase selection. As such, Khandelwal does not teach or suggest a method for or an access device comprising

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means for "indicating a desired impulse purchase selection using an out of band frequency which is different than content providing frequencies."

Furthermore, Khandelwal teaches connecting the hosts to the service provider using *both* "in-band *and* out-of-band" channels. Without disclosing anything further, one skilled in the art reading Khandelwal would understand this to mean that the in band channels would be used for communications common to in band channels and the out of band channels would be used for communications common to out of band channels. Since using an out of band frequency to indicate a desired impulse purchase selection is not known in the art prior to the present invention (via Khandelwal or any other source), Khandelwal's disclosure of a mere connection between an access device and a service provider using both "in-band and out-of-band" channels provides no motivation whatsoever to use the out of band channel to communicate a request for an impulse purchase selection. As such Khandelwal lacks the advantages discussed above, namely increased security and increased available bandwidth on the content providing frequencies.

Therefore, Khandelwal cannot be said to teach or suggest a method for or an access device comprising means for "indicating a desired impulse purchase selection using an out of band frequency which is different than content providing frequencies."

Since the suggested combination fails to disclose or suggest all of the features of independent claims 1, 2, 7, 8 and 13, as amended, these claims are believed to be distinct and patentable over Wasilewski and Khandelwal, taken singly or in combination. Accordingly, applicants respectfully assert that the above-mentioned independent claims are in a position for allowance for at least the stated reasons. Additionally, applicants respectfully assert that claims 4-6 and 10-12 are patentable over the Wasilewski and

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Khandelwal references at least by virtue of their respective dependencies from the aforementioned independent claims. Reconsideration of the rejection is earnestly solicited.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims now pending in the application are in condition for allowance. Early and favorable reconsideration of the case is respectfully requested.

Respectfully submitted,  
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